

# In the United States Court of Federal Claims

No. 05-8 C  
Filed January 24, 2007  
NOT FOR PUBLICATION

TYRONE HURT,	)	
	)	
Plaintiff,	)	
v.	)	<i>Pro se</i> plaintiff, subject matter jurisdiction,
	)	Tucker Act, individually named defendants,
THE UNITED STATES,	)	Eighth Amendment, claims sounding in tort,
	)	money-mandating provision of law
Defendant.	)	

Tyrone Hurt, *pro se*, Washington, D.C., plaintiff.

Douglas K. Mickle, Trial Attorney, Franklin E. White, Jr., Assistant Director, David M. Cohen, Director, Commercial Litigation Branch, Civil Division, Peter D. Keisler, Assistant Attorney General, United States Department of Justice, Washington, D.C., for defendant. Maj. Tracey Rockenbach, Department of the Air Force, Rosslyn, VA, of counsel.

## OPINION AND ORDER

GEORGE W. MILLER, Judge.

This matter is before the Court on plaintiff's application to proceed *in forma pauperis* and defendant's motion for summary dismissal for lack of subject matter jurisdiction. Solely for the purpose of addressing whether the Court has jurisdiction, the application to proceed *in forma pauperis* is GRANTED. However, for the reasons set forth below, the Court also GRANTS defendant's motion to dismiss for lack of subject matter jurisdiction.

On January 5, 2005, plaintiff, who is a parolee appearing *pro se*, filed a complaint in this Court seeking \$1 billion in damages from an individually named social worker. Plaintiff alleges that this individual violated his rights under the Eighth Amendment of the United States Constitution, harassed him, and defamed him.

On November 17, 2006, defendant, the United States, filed a motion for summary dismissal on the ground that the United States Court of Federal Claims lacks jurisdiction over the subject matter of plaintiff's claims alleged in the complaint. On December 8, 2006, plaintiff filed a "motion for summary reversal," which the Court treats as an opposition to defendant's motion.

Because plaintiff is appearing *pro se*, his pleading is “held to ‘less stringent standards than formal pleadings drafted by lawyers,’” and accordingly, such pleadings are construed “liberally.” *McSheffrey v. United States*, 58 Fed. Cl. 21, 25 (2003) (quoting *Haines v. Kerner*, 404 U.S. 519, 520 (1972)). “This latitude, however, does not relieve a *pro se* plaintiff from meeting jurisdictional requirements.” *Bernard v. United States*, 59 Fed. Cl. 497, 499, *aff’d*, 98 Fed. Appx. 860 (Fed. Cir.), *reh’g denied*, 48 Fed. Appx. 860 (Fed. Cir. 2004).

All federal courts are courts of limited jurisdiction. *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978); *RHI Holdings, Inc. v. United States*, 142 F.3d 1459, 1461 (Fed. Cir. 1998). “Only Congress may determine a lower federal court’s subject-matter jurisdiction.” *Kontrick v. Ryan*, 540 U.S. 443, 452–53 (2004) (citing U.S. CONST. art. III, § 1). “The jurisdiction of the Court of Federal Claims is prescribed by the metes and bounds of the United States’ consent to be sued in its waiver of immunity.” *RHI Holdings*, 142 F.3d at 1461. Such consent to be sued “will be strictly construed, in terms of its scope, in favor of the sovereign.” *Lane v. Pena*, 518 U.S. 187, 192 (1996). Rule 12(h)(3) of the Rules of the United States Court of Federal Claims (“RCFC”) requires the Court to dismiss a claim if it concludes at any time, either on motion or *sua sponte*, that it lacks subject matter jurisdiction over the claim. When ruling on a motion to dismiss for lack of subject matter jurisdiction, “the allegations of the complaint should be construed favorably to the pleader, to the end that the court must accept as true the facts alleged in the complaint.” *Gajic-Stajic v. United States*, 36 Fed. Cl. 422, 423 (1996) (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)). Plaintiff carries the burden of establishing that jurisdiction exists, however, once subject matter jurisdiction has been brought into question. *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988).

The jurisdiction of the United State Court of Federal Claims is prescribed by the Tucker Act, which provides:

The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

28 U.S.C. § 1491(a)(1) (2000). As a preliminary matter, by the plain language of the Tucker Act, the Court of Federal Claims has jurisdiction to hear cases against the United States as defendant and does not possess jurisdiction to hear cases against individually named defendants. *Stamps v. United States*, 73 Fed. Cl. 603, 608 (2006); *Stephenson v. United States*, 58 Fed.Cl. 186, 190 (2003); *see also* RCFC 10(a). Nonetheless, even construing the complaint as a complaint against the United States rather than a complaint against the named individual, the Court still lacks jurisdiction over plaintiff’s claims.

Plaintiff's claims based upon a tort theory—*i.e.* defamation and harassment—are excluded from the Court's jurisdiction by the express language of the Tucker Act. 28 U.S.C. § 1491(a)(1). Moreover, it is long-settled law that the Tucker Act does not permit the recovery of money for alleged violations of the Eighth Amendment. The Tucker Act constitutes a waiver of sovereign immunity. *United States v. Mitchell*, 463 U.S. 206, 212 (1983). However, the Tucker Act does not create a substantive right enforceable against the United States. *Testan*, 424 U.S. at 398. The claimant must identify another source of law that creates the substantive right and demonstrate that the source of law mandates compensation. *Mitchell*, 463 U.S. at 216-17. The other source of law must be "reasonably amenable to the reading that it mandates a right of recovery in damages." *Fisher v. United States*, 364 F.3d 1372, 1379 (Fed. Cir. 2004) (citing *United States v. White Mountain Apache Tribe*, 537 U.S. 465, 473 (2003)). The Eighth Amendment of the United States Constitution provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. amend. VIII. The Eighth Amendment, however, is not reasonably amenable to the reading that it mandates a right of recovery in damages. *See Calhoun v. United States*, 32 Fed. Cl. 400, 405 (1994) ("Nothing in the . . . Eighth Amendments creates a cause of action for money damages").

Even construing plaintiff's complaint "liberally," the Court holds that it lacks jurisdiction over the subject matter of plaintiff's claims. Accordingly, the Clerk shall enter judgment dismissing plaintiff's complaint without prejudice pursuant to RCFC 12(h)(3).

IT IS SO ORDERED.

GEORGE W. MILLER  
Judge